



APR 20 2001

ANNEX 2 (1)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Peter Miller
See Str. 27
71229 Leonberg
Germany

In re Application of MILLER, Peter, Anthony
U.S. Application No.: 09/646,764
PCT No.: PCT/AU98/00199
International Filing Date: 26 March 1998
Priority Date: None
Attorney's Docket No.: None
For: A COST-EFFECTIVE BEER BREWING
PROCESS

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT
(37 CFR 1.181)

This decision is issued in response to applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181 filed on 20 December 2000. No petition fee is required.

BACKGROUND

On 26 March 1998, applicant filed international application PCT/AU98/00199 which designated the United States. On 30 September 1999, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 27 September 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the international filing date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the international filing date, i.e., 26 September 2000.

On 22 September 2000, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, an executed declaration. The transmittal letter noted that the international application had already been transmitted by the IB, and it contained an authorization to charge Deposit Account No. 50-1200 for required fees, including the small entity basic national fee.

On 24 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the declaration was abandoned with respect to the United States for failure to timely pay the basic national fee. Specifically, the Notification stated that the agent signing the submission was not authorized to make charges against the identified Deposit Account, therefore precluding collection of the basic national fee.

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On 20 December 2000, applicant filed the petition considered herein. The petition asserts that the required amounts were in the Deposit Account at the time the application was submitted, and that the Notification Of Abandonment should therefore be withdrawn.

DISCUSSION

A review of the petition and the attachments thereto confirms that applicant authorized a charge to his Deposit Account for the basic national fee before the expiration of thirty months from the priority date, and that the Deposit Account contained the funds required for the basic national fee. The Notification Of Abandonment was mailed because the Deposit Account, as created, failed to identify any authorized users (including the applicant and account holder, Peter Miller), and the Deposit Account therefore could not be charged the necessary fees. However, it is USPTO policy that, where an account is created with no authorized users, the account holder is treated as the sole authorized user of the account. Applying this policy to the present case, applicant will be treated as an authorized user of Deposit Account No. 50-1200. Thus, based on the authorization to charge contained in the transmittal letter filed 22 September 2000, applicant has timely paid the basic national fee. The Notification Of Abandonment mailed on 24 November 2000, based as it was on applicant's purported failure to pay the basic national fee, is therefore appropriately vacated.

The declaration filed by applicant on 22 September 2000 is missing page 1. Accordingly, the declaration is not in compliance with 37 CFR 1.497.

CONCLUSION


Applicant's petition to withdraw the holding of abandonment is **GRANTED**. The Notification Of Abandonment mailed on 24 November 2000 is hereby **VACATED**.

Deposit Account No. 50-1200 has been charged \$485 as the small entity basic national fee and \$39 as the small entity fee for inclusion of an extra independent claim.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accord with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed requiring submission of a declaration in compliance with 37 CFR 1.497 and the surcharge for filing this declaration after the thirty month deadline.


Boris Milef
PCT Legal Examiner
PCT Legal Office

RMR/BM :rmr


Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459